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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,802	05/11/2001	Jeffrey A. Ruschke	8266-0592	7034

7590 10/24/2003

Intellectual Property Group
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EXAMINER

LUBY, MATTHEW D

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,802

Applicant(s)

RUSCHKE ET AL.

Examiner

Matt Luby

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-- **Th MAILING DATE of this communication appears on the cover sheet with the corresponding address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-40 is/are pending in the application.
- 4a) Of the above claim(s) 23-25, 27 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 30-33 is/are allowed.
- 6) ☒ Claim(s) 8-10, 12-22, 26, 29 and 34-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. In view of the Appeal Brief filed on 7/28/03, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Applicant's arguments with respect to claims 8, 16, 21 and 34 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "the handle extends from the frame of the propulsion device to a height above the patient restraint board" (claim 19) is vague and indefinite. The preamble of claim 16 only sets forth a propulsion system. No actual patient support or patient restraint board has been positively claimed. Therefore it is unclear how the handle of the frame of the propulsion device can extend to a height above something that has not been claimed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-9, 12-15 and 34-40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by German Patent 1,041,210, hereafter '210.

All of Applicants' positively claimed limitations are clearly shown in the Figures of '210.

The use of the phrase "adapted" has been noted in the claims. It has been held that the recitation that an element is "adapted" is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138 (CCPA 1946).

6. Claims 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Abstract 08-317953, hereafter '953.

'953 disclose a propulsion system "configured" to move a patient support having a patient restraint board, the propulsion system comprising: a propulsion device (Figures 24-28) "configured" to contact the floor to power movement of the patient support, a coupler "adapted" to couple the propulsion device to the patient support, the coupler being "adapted" to be coupled to the patient restraint board (Figure 28), wherein the coupler is "adapted" to couple to a base frame of the patient support (Figure 28) wherein the propulsion device includes a frame (Figures 26 & 28), a vertically extending handle (Figures 26 & 28), and the coupler includes a first member (72) "adapted" to be coupled to the patient restraint board and the vertically extending handle (Figures 26 & 28), wherein the vertically extending handle extends from the frame of the propulsion device to a height above the patient restraint board (Figure 26), and the coupler is "adapted" to couple to a top edge of the patient restraint board (Figure 28).

The use of the phrase "adapted" has been noted in the claims. It has been held that the recitation that an element is "adapted" is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138 (CCPA 1946).

7. Claims 21, 22, 26 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Abstract 08-317953, hereafter '953.

'953 disclose a propulsion system "configured" to move a patient support having a bedframe and a mattress, the propulsion system comprising: a propulsion device (Figures 24-28) "configured" to contact the floor to power movement of the patient support, a coupler configured to move between a coupled position coupling the

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propulsion device to the bedframe and an uncoupled position permitting movement of the propulsion device away from the bedframe (Figures 25-28), a vertically extending handler coupled to the coupler (Figures 26 & 28) and configured to move the coupler between the coupled and uncoupled positions, wherein the handle includes a handle portion positioned at a sufficient height above the floor to facilitate grasping of the handle portion by user to move the propulsion system about a care facility (Figures 26 & 28), wherein the coupler is hook shaped (Figure 25) and further comprising a plurality of wheels (Figure 26) configured to permit a user pushing on the handle to roll the propulsion system from one patient support to another (Figures 26 & 28).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over '210 in view of '953.

'210 disclose that the propulsion system including a vertically extending handle (15), wherein the propulsion system includes a frame (1, 4, 3, 5) and a wheel (2) coupled to the frame, the vertically extending handle being coupled to the frame (Figure 2) and the second member (10) is coupled to the vertically extending handle (Figure 2). '210 do not specifically disclose that the wheel is motorized. '953 disclose that a wheel

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of a propulsion system is motorized (25a & 25b are powered by 30a & 30b) in order to provide propulsion assistance to a human operator (an inherently recognizable benefit of motorized propulsion systems). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the wheel of '210 is motorized, as taught by '953, in order to provide propulsion assistance to a human operator.

Allowable Subject Matter

10. Claims 11 and 30-33 are allowed. The prior art fails to disclose a propulsion system including a vertically extending handle that is coupled to the frame and wherein a second member is slidably coupled to the vertically extending handle along with the rest of the recited limitations of claim 11.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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Matt Luby
Examiner
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A handwritten signature in black ink, appearing to read "Matt Luby", written in a cursive style.

m.l.

October 20, 2003